

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

ADOPTION OF AGENDA,
ADOPTION OF MEETING MINUTES OF OCTOBER 4th, 2017,
CONTINUATION OF CASE NO. 15856,
UPDATE ON APPELLATE MATTERS

November 9, 2017

Santa Fe, New Mexico

BEFORE: DAVID R. CATANACH, CHAIRPERSON
ED MARTIN, COMMISSIONER
DR. ROBERT S. BALCH, COMMISSIONER
BILL BRANCARD, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on Thursday, November 9, 2017, at the New Mexico Energy, Minerals and Natural Resources Department, Wendell Chino Building, 1220 South St. Francis Drive, Porter Hall, Room 102, Santa Fe, New Mexico.

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1 (9:00 a.m.)

2 CHAIRMAN CATANACH: Good morning. This is
3 a meeting of the New Mexico Oil Conservation Commission.
4 My name is David Catanach, Chairman of the Commission.
5 The time is 9:00 a.m., and today's date is November 9th,
6 2017. This meeting is being conducted in Porter Hall
7 within the Wendell Chino State Building.

8 At this time I will take roll. Will the
9 Commissioners be so kind to introduce themselves for the
10 record?

11 COMMISSIONER MARTIN: Ed Martin, New Mexico
12 State Land Office designee.

13 COMMISSIONER BALCH: Dr. Robert Balch,
14 designee of the Secretary of Energy, Minerals and
15 Natural Resources.

16 CHAIRMAN CATANACH: Thank you,
17 Commissioners.

18 Also present today is Mr. Bill Brancard,
19 Commission attorney, and Ms. Florene Davidson.

20 Commissioners, in your packet today, you
21 should have an agenda for today's meeting. If you've
22 reviewed the agenda, do I have a motion and second to
23 adopt the agenda?

24 COMMISSIONER BALCH: I have reviewed the
25 agenda, and I move to adopt it.

1 COMMISSIONER MARTIN: Second.

2 CHAIRMAN CATANACH: All in favor?

3 (Ayes are unanimous.)

4 CHAIRMAN CATANACH: The motion to adopt
5 today's agenda is passed.

6 Also in your packet are the minutes from
7 the October 4th, 2017 Commission hearing.

8 Commissioners, again, have you reviewed the
9 minutes? Do you have any changes, and if not, do I hear
10 a motion to adopt the minutes?

11 COMMISSIONER MARTIN: I have reviewed them.
12 I have no changes, and I would move to adopt.

13 COMMISSIONER BALCH: I also have reviewed
14 them. I have no changes and second the motion.

15 CHAIRMAN CATANACH: All in favor?

16 (Ayes are unanimous.)

17 CHAIRMAN CATANACH: The motion to adopt the
18 minutes from the October 4, 2017 meeting is passed.

19 With regards to today's docket, I'll make
20 one announcement. Case Number 15856, which is the
21 application of Stakeholder Gas Services, LLC for
22 approval to drill and operate two acid gas injection
23 wells in Lea County, New Mexico, that case is on the
24 docket today, but it will be continued to the Commission
25 meeting on January 18th, 2018.

1 (The proceedings conclude, 9:01 a.m.)

2 (11:45 a.m.)

3 CHAIRMAN CATANACH: Still on the record,
4 and Mr. Brancard's going to give us an update.

5 MR. BRANCARD: Yeah. So yesterday morning
6 we had an argument in the case of Jalapeno versus the
7 Commission appealing the Matador decision. This
8 argument was limited to a motion filed by Matador to
9 dismiss two of the five issues that Jalapeno presented.
10 And basically the reason for the motion was, the motion
11 that they were asking the Court -- Jalapeno was asking
12 the Court to throw out what they call Rule 35. It's the
13 rule for the risk charge. And Matador's argument was
14 that really that's beyond the Commission's power -- I
15 mean the tort's power in this case because this is a
16 peer review of the Commission's decision, and the
17 Commission's decision wasn't based on the parts of the
18 rule that Jalapeno's upset with. Jalapeno's upset with
19 the presumption in the rule and with the service
20 equipment cost. And, essentially, the Commission heard
21 all the evidence, applied the 150 percent and didn't
22 apply the service equipment cost.

23 So Matador made the argument to the Court
24 that if you reverse the Commission, you haven't
25 solved -- if you throw out the ruling, you haven't

1 really changed the order, you know, because the order
2 wasn't relying on that regulation, the presumption.

3 Michael Feldewert kind of had the judge
4 with him through his argument, and then when Gene
5 Gallegos got up, he got the judge a little confused. So
6 the judge got confused by the fact that what the
7 Commission did in the case -- and in hindsight perhaps
8 we could have done this differently -- is the Commission
9 actually ruled on Jalapeno's motion to throw out the
10 regulation, and the Commission said, Well, that
11 regulation looks fine to us.

12 Really, you didn't have any authority to
13 throw out a regulation. Okay? So you could have just
14 thrown out that part of their motion by saying, We have
15 no authority to do this anyway. But the Commission
16 said, This is a reasonable rule; we're fine with it. So
17 on that basis, the judge was sort of like, Well, maybe I
18 am reviewing what the Commission did then, even though
19 the Commission did have authority.

20 So I didn't really get to say anything in
21 that case. But I didn't really file anything with the
22 motion. I kind of made the same argument but in
23 response to their main brief in the case, so an arm -- I
24 said the Commission -- the Court really didn't have
25 authority to hear these points anyway.

1 So the judge did not rule. He wanted to
2 see parts -- he wanted to -- for us to show him which
3 parts of the record dealt with the issue in front of the
4 Commission, in other words, Jalapeno's motion, Matador's
5 response, the Commission hearing on the motion. And so
6 I believe the argument today shifts off references to
7 the judge.

8 He's likely going to call the lawyers back
9 in and sort of verbally rule on this motion. Either
10 way, we've still got to deal with the rest of the issues
11 in the case. So this motion wasn't going to solve the
12 case one way or the other, you know. And he is
13 apparently willing to sort of just rule orally as
14 opposed to writing a decision, which if you read today's
15 "New Mexican," a little case in the corner about voting
16 rights, state employees have to get time to vote even in
17 a municipal election, paid time to vote. He was
18 actually ruling on that when we walked in the courtroom,
19 literally talking into a speakerphone to the other
20 attorneys and giving a ruling. So that's what he's
21 probably going to do on this case on the motion, just
22 sort of talk to the attorneys, Here's my ruling, because
23 waiting for a written decision from him is difficult,
24 because as you know, we've been waiting 15 months for a
25 decision in the geothermal case from the same judge.

1 COMMISSIONER BALCH: Now that we've had
2 ingestion added to our lunch schedule --

3 MR. BRANCARD: Yes.

4 CHAIRMAN CATANACH: Any timetable on when
5 we're going to hear the actual case?

6 MR. BRANCARD: Well, and here's the odd
7 part. Nobody has asked for an oral argument on the full
8 case. So I think if he brings the lawyers in, I will
9 certainly bring up to him, to the judge, Do you want
10 oral arguments on the full case? Okay? Because some of
11 these judges have a policy of they will not issue a
12 decision unless they hear arguments by the lawyers.
13 Whereas, some probably are willing to just sort of look
14 at the written briefs and issue a decision, and so
15 whatever it takes to get into a decision, you know. We
16 don't want him sitting there waiting for the parties to
17 ask for an oral argument and nobody does.

18 CHAIRMAN CATANACH: Okay.

19 MR. BRANCARD: It'll be a while.

20 COMMISSIONER BALCH: All right. Thank you,
21 Mr. Brancard.

22 This Commission hearing is adjourned.

23 (The proceedings conclude, 11:50 a.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court
6 Reporter, New Mexico Certified Court Reporter No. 20,
7 and Registered Professional Reporter, do hereby certify
8 that I reported the foregoing proceedings in
9 stenographic shorthand and that the foregoing pages are
10 a true and correct transcript of those proceedings that
11 were reduced to printed form by me to the best of my
12 ability.

13 I FURTHER CERTIFY that the Reporter's
14 Record of the proceedings truly and accurately reflects
15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither
17 employed by nor related to any of the parties or
18 attorneys in this case and that I have no interest in
19 the final disposition of this case.

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MARY C. HANKINS, CCR, RPR
Certified Court Reporter
New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2017
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